CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 88752 of 2018

(Arising out of Order-in-Appeal No. MUM-DGPM-WRU/APP-149/17-18 dated 26.04.2018 passed by the Principal Additional Director General, DGPM, WRU, Mumbai)

M/s. Zee Entertainment Enterprises Ltd. .... **Appellant**
18th Floor, A Wing, Marathon Futurex,
N.M. Joshi Marg, Lower Parel,
Mumbai – 400 013.

Versus

Commissioner of CGST and Central Excise, Mumbai Central .... **Respondent**
4th Floor, C. Ex. Building, Churchgate,
Mumbai – 400 020.

Appearance:

Shri Kishor Hingorani, Chartered Accountant for the Appellant

Ms. S. Varalakshmi, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86290/2025

Date of Hearing: 22.07.2025
Date of Decision: 22.07.2025

Per: S.K. MOHANTY

Heard both sides and examined the case records.

2. The appellants herein are engaged *inter alia*, in the provision of taxable services under the category of 'broadcasting services'. The appellants export such service to the outside country. During the disputed period i.e., April 2011 to March 2012; and April 2012 to June 2012, the appellants had filed the applications in proper format before the jurisdictional service tax authorities, claiming rebate amounting to Rs.4,77,03,710/- in terms of Notification No.11/2005-S.T., dated 19.04.2005, for the service tax paid on

export of such output services. Out of the total rebate claim amount of Rs.4,77,03,710/-, the rebate sanctioning authority had disallowed the claim amount of Rs. 4,29,22,241/-, and sanctioned an amount of Rs.47,81,469/- in favour of the appellants. Consequent upon sanction of the said rebate claim of Rs. Rs.47,81,469/-, the department had issued the Show Cause Notice (SCN) dated 30.03.2015, seeking to recover the rebate already sanctioned in favour of the appellants. The said SCN was issued on the ground that the appellants had passed on the burden of tax by recovering the service tax from their foreign customers and thus, the doctrine of unjust enrichment is applicable for grant of refund such rebate benefit. The SCN dated 30.03.2015 was adjudicated vide the Order-in-Original No. 10/RST/AC/2016-17 dated 29.11.2016, in confirming the demand and recovery of erroneously sanctioned refund of Rs. 47,81,469/- along with interest. The said adjudication order dated 29.11.2016 was appealed against by the appellants before the learned Principal Additional Director General [acting as Commissioner (Appeals), in terms of CBEC's Order No.17/2017-Service Tax dated 28.11.2017], which was disposed of vide Order-in-Appeal No. MUM-DGPM-WRU/APP-149/17-18 dated 26.04.2018 (for short, referred to as "the impugned order"). Vide the impugned order, the learned first appellate authority has upheld the adjudication order 29.11.2016 and rejected the appeal filed by the appellants. Feeling aggrieved with the impugned order dated 26.04.2018, the appellants have preferred this appeal before the Tribunal.

3. The preliminary question involved in the present case is, whether this Tribunal has the jurisdiction to decide the appeal, concerning the issue of confirmation of service tax demand and recovery of erroneously sanctioned rebate in terms of Section 73(1) of the Finance Act, 1994 or otherwise?

4. The statutory provisions existed at the material time, relevant for consideration of the issue of jurisdiction of the Tribunal for deciding the appeal of rebate claim of service tax paid on the exported output services, are extracted herein below:

"A. The Central Excise Act, 1944

<u>Section 35B. Appeals to the Appellate Tribunal</u>

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

(a) a decision or order passed by the Commissioner of Central Excise as an adjudicating authority;

(b) an order passed by the Commissioner (Appeals) under section 35A;

(c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate Commissioner of Central Excise under section 35, as it stood immediately before the appointed day;

(d) an order passed by the Board or the Commissioner of Central Excise, either before or after the appointed day, under section 35A, as it stood immediately before that day:

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -

(a) ……………………………….;

(b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;
(c) ……………………………..;
(d) ……………………………..:

Section 35EE. Revision by Central Government

(1) The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 35B, annul or modify such order:

…………………………………..

B. Service Tax-Chapter V of Finance Act, 1944

Section 83. Application of certain provisions of Act of 1944

The provisions of the following sections of the Central Excise Act, 1944 (1 of 1944), as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise:-

sub-section (2A) of section 5A, sub-section (2) of section 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 15A, 15B, 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F, 35FF to 35-O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, 37C, 37D, 38A and 40.

Section 86. Appeals to Appellate Tribunal

(1) Any assessee aggrieved by an order passed by a Commissioner of Central Excise, under Section 73 or Section 83A, or an order passed by a Commissioner of Central Excise (Appeals) under Section 85, may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order.

…..…………………………

(7) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944."

5. On reading of the above quoted statutory provisions, it would reveal that as per the *proviso* clause appended to sub-section (1) of Section 35B of the Act of 1944, no appeal shall lie to this Tribunal and that no jurisdiction has been vested on the Tribunal to decide the appeal, if the impugned order passed by the lower authority, relates to the issue of claim of rebate of service tax on services exported to any country or territory outside India [as per sub-section (7) of Section 86 of the Act of 1994, the phrase 'duty of excise on goods exported' has to be read as 'service tax on the services exported']. In such an eventuality, the person aggrieved with an order passed by the Commissioner (Appeals) under Section 35A of the Act of 1944, may file a revision application before the Central Government for annulling and modifying such order. It has been provided in Section 83 of the Act of 1994 that certain provisions of the Act of 1944 shall apply in relation to the service tax matters. Thus, as per provisions of Section 83 read with sub-section (7) of Section 86 of the Act of 1994, for dealing with the present dispute, the provisions contained in Sections 35B and 35EE of the Act of 1944 can be borrowed or considered.

6. In the present case, the appellants have assailed the impugned order dated 26.04.2018, wherein the learned Commissioner (Appeals) had endorsed the views expressed by the original authority that the erroneously granted rebate claimed amount should be confirmed and recovered under Section 73(1) of the Act of 1994. It is an admitted fact on record that the issue involved in the present appeal relates to rebate claim as per Notification No.11/2005-S.T., dated 19.04.2005, in respect of the service tax paid on the export of 'Broadcasting Services' under Rule 5 of the Export of Services Rules, 2005. Insofar as filing of appeal before the Appellate Tribunal (CESTAT) is concerned, it has been mandated in the *proviso* clause (b) of sub-section (1) of Section 35B of the Act of 1944 that no appeal shall lie to the CESTAT and that it has no jurisdiction to decide any appeal, concerning the issue of rebate of service tax on the services exported to any country or territory outside India. Therefore, we are of the considered view that the appeal filed by the appellants is liable for rejection on the ground of jurisdiction. We made it clear that the appropriate remedy provided in the statute for redressal of the present dispute rests with the authorities under Section 35EE of the Act of 1944, made applicable to the service tax matters in terms of Section 83 of the Act of 1994.

7. In view of the foregoing discussions, the appeal filed by the appellant is dismissed on the grounds of lack of jurisdiction.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM